

Assembly Bill No. 128

Passed the Assembly September 1, 2005

Chief Clerk of the Assembly

Passed the Senate August 30, 2005

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2005, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 37252 of, and to add Section 37254 to, the Education Code, and to amend Items 6110-161-0001, 6110-161-0890, and 6110-243-0001, and to add Item 6110-204-0001 to Section 2.00 of Chapter 38 of the Statutes of 2005, the Budget Act of 2005, relating to education finance, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 128, Committee on Budget. Education finance.

(1) Existing law requires the Superintendent of Public Instruction, with the approval of the State Board of Education, to develop the California High School Exit Examination in English language arts and mathematics in accordance with state academic content standards. Existing law requires, commencing with the 2003–04 school year and each school year thereafter, each pupil completing grade 12 to successfully pass the exit examination as a condition of graduation from high school.

Existing law requires the governing board of each school district maintaining any or all of grades 2 to 9, inclusive, to offer, and authorizes a charter school to offer, programs of direct, systematic, and intensive supplemental instruction to pupils enrolled in grades 1 to 9, inclusive, who have been recommended for retention or who have been retained, and authorizes a school district or charter school to require a pupil who has been retained to participate in supplemental instructional programs.

This bill would provide specified funding for eligible pupils, as defined, who are required to pass the California High School Exit Examination, to be used for intensive instruction and services for those pupils, and provides for the allocation of those funds to schools. The bill would make an appropriation as it would revise items of the Budget Act of 2005 to provide funds for this purpose. The bill would also make an appropriation as it would provide that funds received for supplemental instruction may also be used for these purposes.

(2) Existing law, the Budget Act of 2005, appropriates certain funds for purposes of special education instruction to fund the

costs of children placed in licensed children's institutions who attend nonpublic schools based on a funding formula specified in existing law, and appropriates funds for various special education purposes.

This bill would make an appropriation as it would revise the amounts available for these purposes and would place certain requirements on the use of these funds.

(3) The bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 37252 of the Education Code is amended to read:

37252. (a) The governing board of each school district maintaining any or all of grades 7 to 12, inclusive, shall offer, and a charter school may offer, supplemental instructional programs for pupils enrolled in grades 7 to 12, inclusive, who do not demonstrate sufficient progress toward passing the exit examination required for high school graduation pursuant to Chapter 8 (commencing with Section 60850) of Part 33.

(b) Sufficient progress, as described in subdivision (a), shall be determined on the basis of either of the following:

(1) The results of the assessments administered pursuant to Article 4 (commencing with Section 60640) of Chapter 5 of Part 33 and the minimum levels of proficiency recommended by the state board pursuant to Section 60648.

(2) The pupils' grades and other indicators of academic achievement designated by the district.

(c) For purposes of this section, a pupil shall be considered to be enrolled in a grade immediately upon completion of the preceding grade. Supplemental instruction may also be offered to a pupil who was enrolled in grade 12 during the prior school year.

(d) For the purposes of this section, pupils who do not possess sufficient English language skills to be assessed, as set forth in Sections 60850 and 60853, shall be considered pupils who do not demonstrate sufficient progress towards passing the exit examination required for high school graduation and shall

receive supplemental instruction designed to assist pupils to succeed on the high school exit examination.

(e) Except as provided in subdivision (h), programs may be offered pursuant to this section during the summer, before school, after school, on Saturday, or during intersession, or in any combination of summer, before school, after school, Saturday, or intersession instruction, but shall be in addition to the regular schoolday. Any minor pupil whose parent or guardian informs the school district that the pupil is unable to attend a Saturday school program for religious reasons, or any pupil 18 years of age or older who states that he or she is unable to attend a Saturday school program for religious reasons, shall be given priority for enrollment in supplemental instruction offered at a time other than Saturday over a pupil who is not unable to attend a Saturday school program for religious reasons.

(f) A school district or charter school offering supplemental instructional programs pursuant to this section shall receive funding as described in Section 42239 and in the annual Budget Act.

(g) Notwithstanding any other provision of law, neither the State Board of Education nor the Superintendent of Public Instruction may waive any provision of this section.

(h) Funds received for supplemental instruction pursuant to this section may also be used to provide intensive instruction and services to eligible pupils pursuant to Section 37254.

SEC. 2. Section 37254 is added to the Education Code, to read:

37254. (a) For purposes of this section, “eligible pupil” means a pupil who is required to pass the California High School Exit Examination required for high school graduation pursuant to Chapter 8 (commencing with Section 60850) of Part 33, and who has failed one or both parts of that examination. For the 2005–06 fiscal year, an eligible pupil does not include a pupil who receives services related to the passage of the examination pursuant to Provision 24 of Item 6110-161-0001 of Section 2.00 of Chapter 38 of the Statutes of 2005.

(b) The Superintendent shall rank schools on the basis of the percentage of eligible pupils. The Superintendent may give priority to schools with the highest percentage of eligible pupils who have failed both parts of the examination.

(c) From the funds appropriated for purposes of this section, the Superintendent shall apportion six hundred dollars (\$600) per eligible pupil to school districts on behalf of schools identified pursuant to subdivision (b) in the order determined by the Superintendent until the funds are exhausted. The amount per eligible pupil shall be increased annually by the percentage determined in paragraph (2) of subdivision (b) of Section 42238.1.

(d) (1) The funds apportioned pursuant to subdivision (c) shall be used to provide intensive instruction and services designed to help eligible pupils pass the California High School Exit Examination.

(2) Intensive instruction and services may be provided during the regular schoolday provided that they do not supplant the instruction of the pupil in the core curriculum areas as defined in paragraph (5) of subdivision (a) of Section 60603, or physical education instruction.

(3) Intensive instruction and services may include, but are not limited to, all of the following:

(A) Individual or small group instruction.

(B) The hiring of additional teachers.

(C) Purchasing, scoring, and reviewing diagnostic assessments.

(D) Counseling.

(E) Designing instruction to meet specific needs of eligible pupils.

(F) Appropriate teacher training to meet the needs of eligible pupils.

(e) As a condition of receiving funds pursuant to subdivision (c), the school district shall accomplish all of the following:

(1) Ensure that each eligible pupil receives an appropriate diagnostic assessment to identify that pupil's areas of need.

(2) Ensure that each pupil receives intensive instruction and services based on the results of the diagnostic assessment.

(3) Demonstrate that funds will be used to supplement and not supplant existing services.

(4) Provide to the Superintendent of Public Instruction, in a manner and by a date certain determined by the Superintendent, the number of eligible pupils at each high school in the school district.

(5) Submit an annual report to the Superintendent in a manner determined by the Superintendent that describes the number of pupils served, the types of services provided, and the percentage of pupils in the school district who successfully pass the California High School Exit Examination.

SEC. 3. Item 6110-161-0001 of Section 2.00 of Chapter 38 of the Statutes of 2005 is amended to read:

6110-161-0001—For local assistance, Department of Education (Proposition 98), Program 10.60-Special Education Programs for Exceptional Children 2,890,022,000
Schedule:

- (1) 10.60.050.003-Special education instruction 2,826,428,000
- (2) 10.60.050.080-Early Education Program for Individuals with Exceptional Needs 77,989,000
- (3) Reimbursements for Early Education Program, Part C -14,395,000

Provisions:

1. Funds appropriated by this item are for transfer by the Controller to Section A of the State School Fund, in lieu of the amount that otherwise would be appropriated for transfer from the General Fund in the State Treasury to Section A of the State School Fund for the 2005–06 fiscal year pursuant to Sections 14002 and 41301 of the Education Code, for apportionment pursuant to Part 30 (commencing with Section 56000) of the Education Code, superseding all prior law.
2. Of the funds appropriated in Schedule (1) of this item, \$11,428,000, plus any COLA, shall be available for the purchase, repair, and inventory maintenance of specialized books, materials, and equipment for pupils with low-incidence disabilities, as defined in Section 56026.5 of the Education Code.

3. Of the funds appropriated in Schedule (1) of this item, \$8,826,000, plus any COLA, shall be available for the purposes of vocational training and job placement for special education pupils through Project Workability I pursuant to Article 3 (commencing with Section 56470) of Chapter 4.5 of Part 30 of the Education Code. As a condition of receiving these funds, each local educational agency shall certify that the amount of nonfederal resources, exclusive of funds received pursuant to this provision, devoted to the provision of vocational education for special education pupils shall be maintained at or above the level provided in the 1984–85 fiscal year. The Superintendent of Public Instruction may waive this requirement for local educational agencies that demonstrate that the requirement would impose a severe hardship.
4. Of the funds appropriated in Schedule (1) of this item, \$4,612,000, plus any COLA, shall be available for regional occupational centers and programs that serve pupils having disabilities, and \$77,055,000, plus any COLA, shall be available for regionalized program specialist services, \$1,807,000, plus any COLA, for small special education local plan areas (SELPAs) pursuant to Section 56836.24 of the Education Code.
5. Of the funds appropriated in Schedule (1), \$1,000,000 is provided for extraordinary costs associated with single placements in nonpublic, nonsectarian schools, pursuant to Section 56836.21 of the Education Code.
6. Of the funds appropriated in Schedule (1), a total of \$178,180,000, plus any COLA, is available to fund the out-of-home care funding formula authorized in Chapter 914 of the Statutes of 2004.

7. Of the amount appropriated in Schedule (2) of this item, \$514,000, plus any COLA, shall be available for infant program growth units (ages birth–two years). Funds for infant units shall be allocated pursuant to Provision 11 of this item, with the following average number of pupils per unit:
 - (a) For special classes and centers—16.
 - (b) For resource specialist programs—24.
 - (c) For designated instructional services—16.
8. Notwithstanding any other provision of law, early education programs for infants and toddlers shall be offered for 200 days. Funds appropriated in Schedule (2) shall be allocated by the State Department of Education for the 2005–06 fiscal year to those programs receiving allocations for instructional units pursuant to Section 56432 of the Education Code for the Early Education Program for Individuals with Exceptional Needs operated pursuant to Chapter 4.4 (commencing with Section 56425) of Part 30 of the Education Code, based on computing 200-day entitlements. Notwithstanding any other provision of law, funds in Schedule (2) shall be used only for the purposes specified in Provisions 10 and 11 of this item.

9. Notwithstanding any other provision of law, state funds appropriated in Schedule (2) of this item in excess of the amount necessary to fund the deficit-ed entitlements pursuant to Section 56432 of the Education Code and Provision 10 of this item shall be available for allocation by the State Department of Education to local educational agencies for the operation of programs serving solely low-incidence infants and toddlers pursuant to Title 14 (commencing with Section 95000) of the Government Code. These funds shall be allocated to each local educational agency for each solely low-incidence child through age two in excess of the number of solely low-incidence children through age two served by the local educational agency during the 1992–93 fiscal year and reported on the April 1993 pupil count. These funds shall only be allocated if the amount of reimbursement received from the State Department of Developmental Services is insufficient to fully fund the costs of operating the Early Intervention Program, as authorized by Title 14 (commencing with Section 95000) of the Government Code.
10. The State Department of Education, through coordination with the SELPAs, shall ensure local interagency coordination and collaboration in the provision of early intervention services, including local training activities, child-find activities, public awareness, and the family resource center activities.
11. Funds appropriated in this item, unless otherwise specified, are available for the sole purpose of funding 2005–06 special education program costs and shall not be used to fund any prior year adjustments, claims or costs.
12. Of the amount provided in Schedule (1), \$162,000, plus any COLA, shall be available to fully fund the declining enrollment of necessary small SELPAs pursuant to Chapter 551 of the Statutes of 2001.

13. Pursuant to Section 56427 of the Education Code, of the funds appropriated in Schedule (1) of this item, up to \$2,324,000 may be used to provide funding for infant programs, and may be used for those programs that do not qualify for funding pursuant to Section 56432 of the Education Code.
14. Of the funds appropriated in Schedule (1) of this item, \$29,478,000 shall be allocated to local educational agencies for the purposes of Project Workability I.
15. Of the funds appropriated in Schedule (1) of this item, \$1,700,000 shall be used to provide specialized services to pupils with low-incidence disabilities, as defined in Section 56026.5 of the Education Code.
16. Of the funds appropriated in Schedule (1) of this item, up to \$1,117,000 shall be used for a personnel development program. This program shall include state-sponsored staff development for special education personnel to have the necessary content knowledge and skills to serve children with disabilities. This funding may include training and services targeting special education teachers and related service personnel that teach core academic or multiple subjects to meet the applicable special education requirements of the Individuals with Disabilities Education Improvement Act of 2004.
17. Of the funds appropriated in Schedule (1) of this item, up to \$200,000 shall be used for research and training in cross-cultural assessments.
18. Of the amount specified in Schedule (1) of this item, \$31,000,000 shall be used to provide mental health services required by an individual education plan pursuant to the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) and pursuant to Chapter 493 of the Statutes of 2004.
19. Of the amount provided in Schedule (1), \$121,199,000 is provided for a COLA at a rate of 4.23 percent.

20. Of the amount provided in Schedule (2), \$3,165,000 is provided for a COLA at a rate of 4.23 percent.
21. Of the amount specified in Schedule (1) of this item, \$58,377,000 shall be allocated to each SELPA based upon an equal amount per ADA and added to each SELPA's base funding as determined pursuant to Chapter 854, Statutes of 1997, and consistent with paragraphs (1) to (4), inclusive, of subdivision (b) of Section 56836.158 of the Education Code.
22. Of the amount appropriated in this item, \$1,480,000 is available for the state's share of costs in the settlement of Emma C. v. Delaine Eastin, et al. (N.D. Cal. No. C96-4179TEH). The State Department of Education shall report by January 1, 2006, to the fiscal committees of both houses of the Legislature, the Department of Finance, and the Legislative Analyst's Office on the planned use of the additional special education funds provided to the Ravenswood Elementary School District pursuant to this settlement. The report shall also provide the State Department of Education's best estimate of when this supplemental funding will no longer be required by the court. The State Department of Education shall comply with the requirements of Section 948 of the Government Code in any further request for funds to satisfy this settlement.

23. Of the funds appropriated in this item, \$2,500,000 shall be allocated directly to special education local plan areas for a personnel development program that meets the highly qualified teacher requirements and ensures that all personnel necessary to carry out this part are appropriately and adequately prepared, subject to the requirements of paragraph (14) of subdivision (a) of Section 612 of the Individuals with Disabilities Education Act of 2004 (IDEA), and Section 2122 of the Elementary and Secondary Education Act of 1965. The local in-service programs shall include a parent training component and may include a staff training component, and may include a special education teacher component for special education service personnel and paraprofessionals, consistent with state certification and licensing requirements. Use of these funds shall be described in the local plans. These funds may be used to provide training in alternative dispute resolution and the local mediation of disputes. All programs are to include evaluation components.
24. Of the amount appropriated in Schedule (1), \$52,610,000 is available for the 2005–06 fiscal year in accordance with both of the following:
- (a) Any amount needed to augment the amounts appropriated in Schedule (1) or (2) to ensure full funding for the 2005–06 fiscal year.

- (b) Once the amount needed to satisfy subdivision (a) is determined, the remaining funds shall be allocated on a one-time basis to SELPAs. These funds shall be allocated on the basis of the average daily attendance of each SELPA. Local educational agencies shall use these funds for one-time purposes, including, but not limited to, the following: to assist students with disabilities pass the California High School Exit Examination, instructional materials, or other one-time expenditures for students with disabilities. First priority for the use of these funds shall be to provide services to pupils with disabilities who are required to pass the California High School Exit Examination in order to receive a diploma in 2006 and who have failed one or both parts of that examination.

SEC. 4. Item 6110-161-0890 of Section 2.00 of the Chapter 38 of the Statutes of 2005 is amended to read:

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| 6110-161-0890—For local assistance, Department of Education, payable from the Federal Trust Fund, Program 10.60-Special Education Programs for Exceptional Children | 1,149,044,000 |
| Schedule: | |
| (1) 10.60.050.012-Local Agency Entitlements, IDEA Special Education..... | 970,398,000 |
| (2) 10.60.050.013-State Agency Entitlements, IDEA Special Education | 2,152,000 |
| (3) 10.60.050.015-IDEA, Local Entitlements, Preschool Program | 59,240,000 |
| (4) 10.60.050.021-IDEA, State Level Activities | 73,220,000 |
| (5) 10.60.050.030-P.L. 99-457, Preschool Grant Program | 39,161,000 |

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| (6) 10.60.050.031-IDEA, State Improvement Grant, Special Education | 2,079,000 |
| (7) 10.60.050.032-IDEA, Family Empowerment Centers | 2,794,000 |

Provisions:

1. If the funds for Part B of the federal Individuals with Disabilities Education Act that are actually received by the state exceed \$1,132,573,000, at least 95 percent of the funds received in excess of that amount shall be allocated for local entitlements and to state agencies with approved local plans. Up to 5 percent of the amount received in excess of \$1,132,573,000 may be used for state administrative expenses upon approval of the Department of Finance. If the funds for Part B of the federal Individuals with Disabilities Education Act that are actually received by the state are less than \$1,132,573,000, the reduction shall be taken in other state level activities.
2. The funds appropriated in Schedule (2) shall be distributed to state-operated programs serving disabled children from 3 to 21 years of age, inclusive. In accordance with federal law, the funds appropriated in Schedules (1) and (2) shall be distributed to local and state agencies on the basis of the federal Individuals with Disabilities Education Act permanent formula.

3. Of the funds appropriated in Schedule (4), \$2,500,000 shall be allocated directly to special education local plan areas for a personnel development program that meets the highly qualified teacher requirements and ensures that all personnel necessary to carry out this part are appropriately and adequately prepared, subject to the requirements of Section 612(a)(14) of the Individuals with Disabilities Education Improvement Act of 2004 and Section 2122 of the Elementary and Secondary Education Act of 1965. The local in-service programs shall include a parent training component and may include a staff training component, and may include a special education teacher component for special education service personnel and paraprofessionals, consistent with state certification and licensing requirements. Use of these funds shall be described in the local plans. These funds may be used to provide training in alternative dispute resolution and the local mediation of disputes. All programs are to include evaluation components.
4. Of the funds appropriated in Schedule (4), up to \$300,000 shall be used to develop and test procedures, materials, and training for alternative dispute resolution in special education.
5. Of the funds appropriated by Schedule (5) for the Preschool Grant Program, \$1,228,000 shall be used for in-service training and shall include a parent training component and may, in addition, include a staff training program. These funds may be used to provide training in alternative dispute resolution and the local mediation of disputes. This program shall include state-sponsored and local components.

6. Of the funds appropriated in this item, \$1,420,000 is available for local assistance grants for the Quality Assurance and Focused Monitoring Pilot Program to monitor local educational agency compliance with state and federal laws and regulations governing special education. This funding level is to be used to continue the facilitated reviews and, to the extent consistent with the key performance indicators developed by the State Department of Education, these activities focus on local educational agencies identified by the United States Department of Education's Office of Special Education Programs.
7. The funds appropriated in Schedule (7) shall be used for the purposes of Family Empowerment Centers on Disabilities pursuant to Chapter 690 of the Statutes of 2001.
8. Notwithstanding the notification requirements listed in subdivision (d) of Section 26.00, the Department of Finance is authorized to approve intraschedule transfers of funds within this item submitted by the State Department of Education for the purposes of ensuring that special education funding provided in this item is appropriated in accordance with the statutory funding formula required by federal IDEA and the special education funding formula required pursuant to Chapter 7.2 (commencing with Section 56836) of Part 30 of the Education Code, without waiting 30 days, but shall provide a notice to the Legislature each time a transfer occurs.

9. Of the funds appropriated in Schedule (4), \$69,000,000 shall be used exclusively to support mental health services that are provided during the 2005–06 fiscal year by county mental health agencies pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of the Government Code and that are included within an individualized education program pursuant to the federal Individuals with Disabilities Education Act. Each county office of education receiving these funds shall contract, on behalf of special education local planning areas in their county, with the county mental health agency to provide specified mental health services. This funding shall be considered offsetting revenues within the meaning of subdivision (e) of Section 17556 of the Government Code for any reimbursable mandated cost claim for provision of the mental health services provided in 2005–06. Amounts allocated to each county office of education shall reflect the share of the \$69,000,000 in federal special education funds provided to that county in 2004–05 for mental health services provided pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of the Government Code.
10. Of the amount appropriated in Schedule (1), \$58,377,000 represents the increase in the local assistance portion of the federal grant in 2005–06. These funds have been passed through to be used by each SELPA for discretionary purposes in a manner that is consistent with the federal Individuals with Disabilities Education Act.

SEC. 5. Item 6110-204-0001 is added to Section 2.00 of Chapter 38 of Statutes of 2005, to read:

6110-204-0001—For local assistance, State Department of Education (Proposition 98), for transfer by the Controller to Section A of the State School Fund for allocation by the Superintendent of Public Instruction for allocation to school districts to increase the number of pupils that pass the California High School Exit Examination 20,000,000

Provisions:

1. The funds appropriated in this item are available to assist eligible pupils, as defined in subdivision (a) of Section 37254 of the Education Code, who are required to pass the California High School Exit Examination in order to receive a diploma in 2006.
2. The funds in this item shall be allocated by the State Department of Education as specified in Section 37254 of the Education Code no later than October 1, 2005.

SEC. 6. Item 6110-243-0001 of Section 2.00 of Chapter 38 of the Statutes of 2005 is amended to read:

6110-243-0001—For local assistance, Department of Education (Proposition 98), for transfer by the Controller to Section A of the State School Fund for allocation by the Superintendent of Public Instruction for the unscheduled Pupil Retention Block Grant pursuant to Article 2 of Chapter 3.2 (commencing with Section 41505) of the Education Code 173,257,000

Provisions:

1. Of the funds appropriated in this item, \$1,139,000 is for the purpose of providing an adjustment for increases in average daily attendance at a rate of 0.69 percent. Additionally, \$7,031,000 is for the purpose of providing a cost-of-living adjustment at a rate of 4.23 percent.
2. Notwithstanding any other provision of law, an additional \$26,726,000 in expenditures for this item has been deferred until the 2006–07 fiscal year.

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make the necessary statutory changes to implement the Budget Act of 2005 at the earliest time possible, it is necessary that this act take effect immediately.

Approved _____, 2005

Governor